

Subject - Recall

**ARBITRATION AWARD**

BETWEEN:

UNITED STEELWORKERS OF AMERICA, LOCAL 9316  
(hereinafter called the "Union")

AND:

NORTH ATLANTIC REFINING LIMITED  
(hereinafter called the "Employer" or the "Company")

GRIEVOR: Terry Keating

COUNSEL: For the Union

Boyd Bussey

For the Employer

Harold M. Smith, Q.C.

ARBITRATOR: James C. Oakley

The Arbitration hearing was held at St. John's on February 1 and 26, 2007. The parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Arbitrator would remain seized of the matter for thirty (30) days following publication of the Award in the event there was a question of interpretation or compensation arising from the Award.

The following exhibits were entered at the hearing:

Consent 1 - Collective Agreement between United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, Local 9316 and North Atlantic Refining Limited, Come By Chance, Newfoundland, January 1, 2005 to December 31, 2007

Consent 2 - Grievance Report dated January 10, 2006

Consent 3 - Certificate of Qualification in Industrial Mechanic (Millwright) dated December 7, 1998 issued to Terry Keating, and other certificates

PJ - 1 Email from Phonse Jesso to Shirley Porter dated January 10, 2005

TK - 1 Notice of Intent to Exercise Secondary Recall Rights dated December 13, 2005

TK - 2 Notice of Intent to Exercise Secondary Recall Rights dated February 8, 2005

TK - 3 Shift Schedule - 2005

TK - 4 Shift Schedule - 2006

### **Nature of the Grievance**

The Union grieves that the Grievor, a part time employee, was entitled to be recalled to the position of millwright, in priority to the hiring of a temporary employee, because the Grievor had a secondary right of recall to the position under Article 8.05 (5) of the Collective Agreement. The Employer denied the grievance for the reason that the Grievor did not have the skill and ability required to do the job under Article 9.06.

### **Collective Agreement**

The relevant Articles of the Collective Agreement are as follows:

#### Article 1 Purpose of Agreement

- 1.01 In consideration of the mutual value of joint discussions in order to foster a mutually beneficial Employer/Employee relationship, North Atlantic Refining Limited, hereinafter called “the Company” and United Steelworkers of America, Local 9316, hereinafter called the “Union” agree that the purpose of this Agreement shall be to set forth herein certain terms and conditions of employment pertaining to rates of pay, hours of work and other working conditions and to provide a method of conflict resolution so as to promote orderly and productive relations to achieve an uninterrupted operation of the Refinery at Come By Chance and to achieve the highest level of performance consistent with safety, good health and sustained effort. The Union and the Company pledge to work together to create/maintain an environment of co-operation, rather than confrontation, where employees and management treat each other with respect.

#### Article 2 Recognition and Relationship

2.01 . . .

(2) “Regular Employee” is an employee who has a permanent full-time position and whose name correctly appears as Regular Full-Time Employee on the Seniority List of Regular Employees.

(3) “Part-Time Employee” is an employee who is classed as a Part-Time Employee who may be scheduled to work regular and overtime hours in any classification for fill-in, relief or for supplementing regular work force for increases in work loads, but whose employment is not expected to be year-round. Part-time Employees may only achieve Regular Employee status through the job posting procedure.

. . .

(5) A temporary employee is an employee without seniority rights who is not hired as a part time or regular employee. A temporary employee who has worked sixty (60) cumulative days within a twelve (1) month period, will be assigned to a ranking list for the purpose of rehire. When terminated, a ranked temporary employee will remain on the ranking list for one (1) year from the time of termination. Temporary employees may only achieve regular or part time status through the job posting procedure.

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Article 4 Management Rights

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4.02 All management rights, whether enumerated or otherwise, shall be reserved unto management except as specifically abridged by this Agreement.

. . .

Article 8 Seniority

. . .

8.03 The parties agree that there will exist two separate seniority lists and all seniority rights and benefits provided under this Agreement shall operate independently for each group of employees on the respective seniority lists as indicated. Part-time employees may only become regular employees through posting to a regular employee position.

. . .

8.05 In order to be placed upon the seniority list of part time employees the following procedures or protocol shall apply:

(1) Pursuant to Article 10:01, a person who is hired into a part time position with the Company, who successfully completes his/her probationary period and who is a certified trade journeyman or apprentice, will be placed on the part time seniority list as per his/her seniority date with each certified skill being listed for each employee, as per the current list, first, by primary skill herein called “skills group” and, second, by a secondary certified skill group from the skill

options listed in Appendix "A".

...

- (3) A part time employee may only appear on the part time seniority list in one primary skills group at a time.
- (4) Where a part time employee could be placed in two or more skills groups, he/she must indicate the group he/she is to be placed from which he/she will have a right of primary recall based upon seniority in that group.
- (5) A part time employee once he/she is hired into his/her primary skill group may select other skills groups as per Appendix "A" in which he/she has the certified skills. He/she must exercise his/her secondary recall right upon notification of lay off after all persons in that skill group with primary recall rights are recalled.

...

Article 9 Layoff and Recall

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9.03 In matters concerning lay-off of part time employees, reverse order of seniority shall be separately applied within each skills group as defined by the part time seniority list. The least senior employee shall be laid off or displaced within each secondary skills group. However a part time employee with secondary recall rights cannot be placed into a secondary skills group where there are part time employees with primary skill currently on layoff.

9.04 Part time employees shall be laid off prior to regular employees doing the same work. The employee with less than one year of continuous service since his/her last hire date will receive two (2) days notice. Employees with one (1) year or more of continuous service since his/her last hire date will receive one (1) week notice. Where practicable, except during turnarounds, part time employees will be permitted to complete a full week's work if alternate work as determined by the Company is available that the affected part-time employee has the necessary skills, qualifications and training to perform, provided however that he/she may not displace another employee, nor shall a senior employee not working in the skills group be entitled to displace him/her until the week has been completed.

...

9.06 When increasing the number of employees, preference shall be given in the order of the departmental seniority to persons who have been laid off and have recall rights provided such persons can satisfactorily pass the Company's pre-employment physical examination and have the necessary skills, abilities, qualifications and physical fitness, to perform all the required jobs to be performed and notify the Human Resources Department within four (4) calendar days from the Company's recall notice of their intention to

report and provided they report to work within eight (8) calendar days from the date of the Company's recall notice unless the recalled employee is required by his/her then employer to give 14 days statutory notice of his/her intention to quit.

...

APPENDIX "A"  
WAGE RATES

MAINTENANCE  
4 X 10 Schedule

Temporary employees and part time employees with less than 2080 straight time hours

Classification	January 1, 2005	January 1, 2006
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Instrument Technician	[rates omitted]	
Pipefitter		
High Pressure Welder		
Electrician		
Boilermaker		
Insulator		
Millwright		
Ironworker		
Ironworker Welder		
Crane Operator		
Diesel/Auto Mechanic		
Mobile Equip Operator		
Carpenter/Scaffolder		
Labourer		
Janitor		

**Evidence**

The witnesses called by the Union were Phonse Jesso, Training Supervisor, and Terry Keating, the Grievor. The witness called by the Employer was Derek Pearcey, Maintenance Manager.

North Atlantic Refining Limited operates an oil refinery at Come By Chance, Newfoundland and Labrador. The refinery operates 24 hours per day 7 days per week and processes several products. One of the departments at the refinery is the maintenance department. Maintenance work is carried out during refinery operations where possible. Maintenance work is also conducted during scheduled shutdowns.

Derek Pearcey has held the position of maintenance manager since June, 2005. He is a Professional Engineer and has about 10 years experience at the refinery. Mr. Pearcey testified that there are two groups of maintenance workers. One group works 10 hour shifts 4 days per week from either Monday to Thursday or Tuesday to Friday. This group is not scheduled to work evenings or weekends, and the employees are referred to as “shop” employees. There is also a group of maintenance workers who work a 24 hour rotating shift schedule and follow the schedule of the operations group at the refinery. These employees are referred to as the “shift” employees. The maintenance department assigns 3 employees to each shift comprising one electrician, one millwright and one labourer. There are 4 shift groups who each work a rotating 12 hour shift and are identified as the “A”, “B”, “C” and “D” shifts. The hours of work for the day shift start at 6:30 a.m. and the hours of work for the night shift start at 6:30 p.m. Mr. Pearcey testified that there are a total

of 13 millwrights, comprising 4 millwrights assigned as shift employees and 9 millwrights assigned as shop employees.

The Grievor, Terry Keating, is employed as a boilermaker at the refinery, a position he has held since 1991. He normally works a day shift from Mondays to Thursdays, 10 hours per day, 40 hours per week. He occasionally works other shifts. Mr. Keating is a part time employee, as defined in the Collective Agreement. Mr. Keating testified that he has also worked at the refinery as a labourer, and in that capacity he has worked as an assistant to the millwright doing preventative maintenance. He has also held the position of supervisor during shutdowns and in that capacity he has supervised and given direction to various trades, including boilermaker, labourer and millwright.

Mr. Keating has not worked in the position of millwright at the refinery. Prior to January 1, 2005, part time employees were permitted to list one skill group in addition to their primary skill for the purpose of secondary recall rights. Mr. Keating testified that he listed labourer as his skill group for secondary recall, because there was more work available for labourers than millwrights or other trades. Mr. Keating has an interprovincial journeyman's certificate as a millwright. A copy of the journeyman's certificate dated December 7, 1998 was entered as an exhibit. Mr. Keating also referred to his certificate of apprenticeship as millwright dated July 21, 1997, which stated that he had successfully completed training as an apprentice and passed the required tests and examinations.

Mr. Keating testified that he completed all required 8 week blocks for his apprenticeship training. He did not have anyone at the refinery sign for his completion of apprenticeship training as a millwright.

The current Collective Agreement, which came into effect on January 1, 2005, revised the provision for secondary recall and permitted employees to select multiple skills for secondary recall. Mr. Keating testified that in early January, 2005 he asked to be listed as a millwright for secondary recall. He spoke to Phonse Jesso, Training Supervisor, and showed Mr. Jesso his interprovincial millwright certificate. Mr. Jesso told him that the certificate would be placed on his file in the human resources department and Mr. Jesso did not “see any problem”. Mr. Keating submitted a form entitled “Intent to Exercise Secondary Recall Rights”, on February 8, 2005, stating he wished to exercise his secondary recall rights as a millwright. He submitted the same form again on December 13, 2005.

The Grievor received notice of layoff on December 14, 2005 and was laid off December 16<sup>th</sup>. He was laid off for two weeks and was recalled to work on December 29, 2005 to the position of boilermaker. Just prior to being laid off, the Grievor worked in the position of boilermaker on December 5, 6, 7 and 8, and then exercised secondary recall rights and worked in the position of labourer on December 12, 13, 14 and 15 on the “B” shift. The Grievor testified that he was informed that two temporary employees, Joe Norman and Harris Gavin, were hired to work as millwrights during his two week period of layoff. Both had less seniority than Mr. Keating. Mr. Keating believed that he had priority to be recalled to the millwright position pursuant to his exercise of secondary recall rights. He raised the issue with Derek Pearcey. Mr. Pearcey confirmed to him that he made the decision to hire the temporary employees.

Phonse Jesso testified that he has held the position of training supervisor for the Employer for about

10 years. He testified that Shirley Porter, in the human resources department, asked him to determine whether the Grievor had an interprovincial certificate as a millwright. The Grievor provided him with a copy of his interprovincial certificate. Mr. Jesso testified that he sent an email to Shirley Porter which he understood answered the question asked by Ms. Porter. The email stated as follows:

Terry Keating is an I.P. Certified Millwright and qualifies to be recalled as a Millwright, in a second skill choice.

Phonse Jesso  
Training Supervisor  
North Atlantic refining Limited

Mr. Jesso said that it was common for the human resources department to ask him about an employee's qualifications or training. He keeps a record of each employee's training on a computer program known as "TRAQ" (Training Recognition and Qualification System).

Mr. Jesso testified that he could not say whether the Grievor was qualified to work as a millwright in a position at the refinery because he had no knowledge of the Grievor's qualifications, other than the interprovincial certificate. He testified that the maintenance manager decides whether an employee is qualified to be recalled. Mr. Jesso testified that a millwright needs site specific training to work at the refinery. He did not have any record of the Grievor taking training in dynamic balancing or laser alignment. He testified that dynamic balancing was part of the apprenticeship training for millwrights.

The refinery offers training for persons employed as millwrights, but does not usually provide millwright training for persons employed in other primary skill groups.

The Grievor testified that he performed dynamic balancing and laser alignment as part of his apprenticeship training. He was not aware of any problem with his qualifications. He said he has done laser alignment on motors and pumps at the refinery, both assisting millwrights and on his own. He has performed dynamic balancing on fin fans either as a boilermaker or assisting a millwright. He believed he could perform the duties of millwright, either in a “shift” position or in a “shop” position. He was aware that during the night shift the shift millwright is the only millwright on duty at the refinery.

Derek Pearcey testified that in December, 2005 there was a need to fill two shift millwright positions and temporary employees were hired. He completed a form to request that the human resources department find employees to fill the jobs. He testified that it was necessary to hire someone with both an interprovincial certificate as a millwright and work experience at the refinery in the millwright position. To meet the qualifications, skill and ability for the position of rotating shift millwright it was necessary to have work experience in the millwright position at the refinery. When the millwright is assigned to the night shift and weekends, he is required to have the ability to work independently because he is the only millwright on duty at that time. It is necessary for the millwright to have the skills required to check the vibration of rotating equipment. The millwright on the night shift is required to do troubleshooting and to advise on whether to shut down

equipment if a vibration is

outside the norm. If the millwright does not act correctly, then the results could be catastrophic, having regard to the high pressures and volatile substances present.

Mr. Pearcey testified that the Grievor had a record of good work performance in the trade of boilermaker. The Grievor did not have any disciplinary record to his knowledge. Mr. Pearcey believed that the Grievor did not have experience performing dynamic balancing of fin fans. He knew that the Grievor had not worked in a millwright position at the refinery, and had not completed any training courses at the refinery related to millwright work. He said the Grievor did not have the skills that would be acquired from working as a millwright at the refinery. Mr. Pearcey testified that the fact that the Grievor had listed his secondary skill as a millwright first came to his attention when hiring the temporary employees. He made the decision at that time that the Grievor was not qualified. Mr. Pearcey testified that he would have had safety concerns if the Grievor was working on shift as the only millwright in the refinery. He did not have a safety concern if the Grievor was working on a shift as a boilermaker or as a helper to a millwright. Mr. Pearcey testified that it was part of his duties as maintenance manager to ensure the safety of everyone at the refinery. He was concerned about his responsibility for safety under the *Occupational Health and Safety Act*, *Criminal Code of Canada*, and Professional Engineering Code of Ethics. He needed to be confident that the person assigned as millwright had the necessary skills to work independently. Mr. Pearcey testified that he did not consider the option of assigning a millwright from the shop to do shift work and then recalling the Grievor to work in the shop.

**Union Submission**

The Union submitted that the Grievor was entitled to be recalled to the position of millwright by operation of various articles of the Collective Agreement including Articles 8.05 (5), 9.03 and 9.06. The Employer violated the Collective Agreement by rehiring two temporary employees to the position. The Grievor was entitled to compensation for the period he was laid off from December 16 to 29, 2005. The Grievor had priority over the temporary employees. The Grievor's primary skill group was boilermaker. Effective January 1, 2005, the Grievor had selected millwright for his secondary skill in addition to his previous selection of labourer. Millwright was one of the skill groups listed in Appendix "A". The Grievor was qualified to be recalled to the millwright position. He had an Interprovincial Certificate. He completed the apprenticeship block training which included laser alignment and dynamic balancing. He had work experience at the refinery as a labourer assisting millwrights. Phonse Jesso, training officer, had sent an email to the human resources department saying the Grievor was qualified for secondary recall as a millwright. In his testimony at the hearing, Mr. Jesso said that the Grievor would be qualified as a millwright if he had completed the four blocks of training required as part of the apprenticeship program. The Grievor said he had completed this training. The Grievor had the skills required for the job pursuant to Article 9.06. Derek Pearcey, maintenance manager, did not know at the time the temporary employees were rehired that the Grievor had listed secondary recall as a millwright. Mr. Pearcey could have selected any one of the 13 qualified millwrights in the department to be assigned to shift

work and then recalled the Grievor as millwright to work in the shop on the 4 X 10 schedule. The Company had the right to reschedule any millwright to work shift work, based on the authority of *United Steelworkers of America, Local 9316 v. North Atlantic Refining Limited*, March 16, 2006 (Fagan). Following the email from Phonse Jesso to the human resources department, there was no communication to the Grievor to inform him that he was not qualified for the millwright position or that he needed experience to work shift work. The Company was required to give effect to the listing of secondary skills. The Arbitrator was entitled to review the Employer's decision on qualifications under Article 9.06, and the Union referred to *Canadian Food and Allied Workers, Local 175 v. Great Atlantic and Pacific Company* (1976) Canadian Labour Law Reports ¶ 14,056 (Ont. H.C.J.). The Grievor had sufficient ability to be awarded the position under Article 9.06. The selection of secondary recall rights under Article 8.05 (5) applied to shift work. Safety was a concern of all employees, however, placement of the Grievor in the position of millwright was not a safety issue. The Union requested that the Grievor be awarded compensation for the period of his layoff.

### **Employer Submission**

The Employer submitted that it complied with the Collective Agreement when it laid off the Grievor from his position as boilermaker on December 16, 2005, and at the same time terminated and rehired the two temporary employees in the positions of millwright. The Grievor did not have an absolute right under Article 8.05 (5) to be recalled in priority to the temporary employees. The Grievor had preference to be recalled in order of seniority provided he had the necessary skills, abilities,

qualifications and physical fitness to perform all the required jobs to be performed, pursuant to Article 9.06. The Grievor did not meet those conditions. The Employer did not question the Grievor's skills and abilities as a boilermaker. However, the Grievor had no work experience at the refinery in the position of millwright. The Grievor listed a secondary skill as millwright for the first time in February, 2005. The Employer questioned the Grievor's skill and ability to do the tasks performed by a shift millwright. The position to be filled required a millwright who could work independently as the only millwright on duty in the refinery on nights and weekends. The fact the Grievor received an Interprovincial Certificate as a millwright in 1998 was not sufficient to demonstrate his skill, ability and qualifications for the position to be filled. It was not appropriate to place the Grievor in the position where he would work alone on shift as millwright. The employer was in the best position to judge the qualifications of the workforce, and in that regard, the Employer referred to *United Steelworkers of America, Local 9316 v. North Atlantic Refining Limited*, March 16, 2006 (Fagan). The Employer was entitled to consider that the environment of the refinery is inherently dangerous, and to consider the employer's obligations under the *Occupational Health and Safety Act* and the *Criminal Code of Canada*. The maintenance manager was entitled to consider his obligations as a professional engineer. The Grievor had not done any millwright refresher courses. The Union could have arranged to have the Grievor trained in millwright skills. The Union submission that the Employer could have assigned a millwright from the shop to do shift work was an admission that the Grievor did not have the skill and ability to do shift work. The Employer was entitled to rehire the temporary employees who had worked in the position and who had demonstrated the necessary skills. Recall based on trade was the practice followed by the parties for some time. Recall to another skill group under Article 8.05 (5) applied only to positions in the 4 X

10 schedule, which was the schedule referred to in Appendix “A”, and did not apply to shift positions. Article 9.03 was not applicable, but

it did support a finding that recall applied to positions in the 4 X 10 schedule. The Employer submitted that there was no violation of the Collective Agreement and requested that the grievance be denied.

### **Considerations**

The Arbitrator will consider whether the Employer violated the Collective Agreement when it did not recall the Grievor, Terry Keating, to the position of millwright in December, 2005. The Grievor was laid off for a period of about two weeks, from December 16 to 29, 2005, and as a result suffered a loss of income. At the same time as the Grievor was laid off, the Company rehired two temporary employees for the position of shift millwright in the maintenance department.

There are three categories of employee described in the Collective Agreement, regular employees, part time employees and temporary employees. There are separate seniority lists maintained for regular and part time employees. Temporary employees do not acquire seniority, but may be assigned to a ranking list for the purpose of rehire following termination. The Grievor was a part time employee. The parties agreed that, as a part time employee, the Grievor had priority to be recalled from layoff before the Company rehired the part time employees, subject to the Grievor

meeting any requirements in the Collective Agreement that applied to the recall.

The Union relies upon Article 8.05 (5) of the Collective Agreement. Article 8.05 (5) states that part time employees may select other skills groups within which to exercise secondary recall rights. Each employee has a primary skill group. The Grievor's primary skill group was boilermaker. The skills groups for the maintenance department are the skilled trades listed in Schedule "A", having regard to Article 8.05 (1), and the Collective Agreement as a whole. Prior to January 1, 2005, employees could list only one secondary skill group. Commencing January 1, 2005, employees could list more than one secondary skill group. The Grievor had previously listed the secondary skill group of labourer, which was the skills group within which he believed he had the most opportunity for recall. He added the secondary skill group of millwright by notice to the human resources department dated February 8, 2005. He gave the same notice again on December 13, 2005.

The Grievor received an Interprovincial Certificate as a millwright dated December 7, 1998. Phonse Jesso, training officer, reviewed the Grievor's Interprovincial Certificate and informed the human resources office by email dated January 10, 2005 that the Grievor was a certified millwright. The statement in the email that the Grievor "qualifies to be recalled as a millwright" may be read having regard to Article 8.05 (1), which refers to an employee being placed on the seniority list "with each certified skill being listed for each employee". As a result of the email from Mr. Jesso, the Grievor was determined by the training officer to have a "certified skill" as millwright. It follows that the Grievor was entitled to be listed on the part time seniority list in the secondary skill of millwright.

The Employer submits that entitlement to be recalled as a millwright with a secondary skill is limited to the positions in the 4 X 10 schedule, which are the shop millwright positions. The Employer maintains that the right of recall does not apply to shift millwrights. The Employer refers to Appendix "A" which lists the wage rates in maintenance with the heading "4 X 10 Schedule". However, the right of recall arises from placement on the part time seniority list according to "each certified skill" as stated in Article 8.05 (1). The listing of primary and secondary skill groups are taken from "the skill options" listed in Appendix "A". For the maintenance department, the skill options are the certified trades listed in Appendix "A". Article 8.05 (5) refers to exercising seniority rights by skill group and makes no reference to being limited to positions in the 4 X 10 schedule. Therefore the Grievor could be recalled to any millwright position, upon being listed as having the secondary skill of millwright on the part time seniority list. The Grievor's right of recall to a secondary skill group is subject to meeting any other applicable article of the Collective Agreement.

The right to be recalled to a position for which an employee has a secondary skill listed on the part time seniority list, is subject to Article 9.06. The Collective Agreement is required to be read as a whole, so that effect is given to all articles of the Collective Agreement. Article 9.06 states that preference will be given to employees having recall rights provided such persons "have the necessary skills, abilities, qualifications and physical fitness, to perform all the required jobs to be performed". The position that was filled by the Company was the position of shift millwright. The shift millwright works a rotating shift schedule, which includes nights and weekends. At those times

the shift millwright is the only millwright on duty in the refinery. The shift millwright is required to work independently, and to give advice to others within the scope of his trade qualification. The Employer determined that the Grievor did not have the necessary skills, abilities and qualifications for the position of shift millwright because he had no prior experience in the position of millwright at the refinery. The issue was not whether the Grievor was qualified to work as a millwright in the shop, where the hours of work are during day shifts on week days, and there are several millwrights on duty at the same time. The Employer took into consideration the nature of the refinery and the risks that could result to safety, health or the environment by having a millwright on duty alone who did not have the necessary skills, abilities and qualifications.

The Arbitrator has considered whether the Employer violated the Collective Agreement in its application of Article 9.06. In this regard, the Arbitrator has considered the appropriate standard of review of the Employer's decision. The Arbitrator refers to *Re Island Telephone Company Limited and International Brotherhood of Electrical Workers, Local 1090* (1983) 8 L.A.C. (3d) 132 (Christie) at 141 as follows:

There are few issues more extensively considered in the arbitral jurisprudence than that of review by arbitrators of management determination with respect to qualifications, skill or ability. In the award of the board in *Re: Textile Workers Union and Lady Galt Towels Ltd.* (1969), 20 L.A.C. 382 (Christie), I expressed my view that any such management determination involves two decisions: first, the setting of a standard of qualifications, skills or abilities and second, the measurement of the employee, or employees, as the case may be, depending on the type of seniority clause in issue, against that standard.

...

The question of whether a particular employee "meets" the qualifications is, it seems to me, a fact to be determined from the evidence. My view has always been that the

ultimate question is whether the employee is judged correctly against the standard established by management, but, as I stated in *Re United Brewery Workers, Local 173 and Carling Breweries Ltd.* (1968), 19 L.A.C. 110 as well as in *Lady Galt Towels* (p. 112):

“An arbitrator must, of course, realize that an employee’s supervisors are in the best position to judge his qualifications and an arbitrator should for that reason hesitate to substitute his own judgment for that of the company.”

Consistent with the above authority is the finding in *North Atlantic Refining Limited and United Steelworkers of America, Local 9316*, March 16, 2006 (Fagan) that the Employer is in the best position to assess the qualifications of employees. The Arbitrator does not find there are any grounds to reverse the decision made by the Employer under Article 9.06 when it assessed the Grievor’s skills, abilities and qualifications for the position of shift millwright. In his testimony, Phonse Jesso stated that, while the Grievor had an Interprovincial Certificate, and was eligible to be listed for the secondary skill of millwright on the seniority list, he was not able to say that the Grievor was qualified for the position of shift millwright.

The Arbitrator has considered that to give effect to Article 8.05 (5) and the listing of a secondary skill of millwright, it would not be open to the Employer to maintain that the Grievor did not have the skills, abilities and qualifications to work in any position of millwright at the refinery. Once the Grievor was determined to have the “certified skill” of millwright, and placed on the seniority list in the secondary certified skill group of millwright, it would defeat the purpose of Articles 8.05 (1) and 8.05 (5) if the Grievor was never considered qualified for recall to a millwright position. However, the issue did not arise in this case as to whether the Grievor was qualified under Article 9.06 for any other position of millwright, such as a shop millwright position. Also, there was no specific

obligation on the Employer in the Collective Agreement to assign a shop millwright to work the shift position and thereby create an opening in the shop that could be filled by the Grievor. The Employer has the management right to manage the workforce, subject to the provisions of the Collective Agreement, and the proper exercise of such rights.

In conclusion, the Employer did not violate Article 8.05 (5), Article 9.06 or any other Article of the Collective Agreement.

**Decision**

For the reasons stated in the Award, the grievance is denied.

**DATED** this 16<sup>th</sup> day of April, 2007.

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James C. Oakley  
Arbitrator